

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the _____ day of _____, 2012 by and between the City of San Carlos hereinafter called "CITY" and City County Association of Governments hereinafter called "C/CAG".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

- A. C/CAG is a joint powers authority established under Government Code 6500 et seq.
- B. That C/CAG desires to engage CITY to render certain financial services to C/CAG related to carrying on the day to day financial operations of C/CAG;
- C. That CITY is qualified to provide such services to C/CAG and;

THEREFORE, C/CAG has elected to engage the services of CITY upon the terms and conditions as hereinafter set forth.

1. Services. The services to be performed by CITY under this Agreement shall include those services set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit is hereby made an obligation of CITY under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon completion of performance of services hereunder by CITY. (b) Notwithstanding the provisions of (a) above, either party may terminate this Agreement without cause by giving written notice not less than thirty (30) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, C/CAG shall compensate CITY for services rendered, and reimburse CITY for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a

limitation upon the right of C/CAG to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to C/CAG hereunder.

3. Compensation; Expenses; Payment. C/CAG shall compensate CITY for all services performed by CITY hereunder in an amount based upon terms set forth in Exhibit A and Exhibit B.

Compensation and reimbursement of costs and expenses hereunder shall be payable upon quarterly billing therefore by CITY to C/CAG.

4. Additional Services. In the event C/CAG desires the performance of additional services not otherwise included within the services described in Exhibit A, such services shall be authorized in advance of the performance thereof by C/CAG's Executive Director (for contracts less than \$50,000 or authorized by C/CAG Board action for contracts \$50,000 or more by motion duly made and carried). Such amendment to this Agreement shall include a description of the services to be performed there under, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Any additional services causing the total contract price to exceed \$50,000 shall require approval by the C/CAG Board. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.
5. Records. CITY shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by CITY hereunder. Said records shall be available to C/CAG for review and copying during regular business hours at CITY's place of business or as otherwise agreed upon by the parties.
6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CITY. CITY represents that it has the necessary professional skills to perform the services required and C/CAG shall rely on such skills of the CITY to do and perform the work. In performing services hereunder CITY shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CITY hereunder. CITY acknowledges the importance to C/CAG of the skill, competency, ability to appropriately work with C/CAG staff and expertise of individual staff assigned to the project, and accordingly the individuals assigned to the Project must be acceptable to C/CAG.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by CITY pursuant to the terms of this Agreement, shall, upon preparation and delivery to C/CAG, become the property of C/CAG.
9. Relationship of Parties. It is understood that the relationship of CITY to C/CAG is that of an independent contractor and all persons working for or under the direction of CITY are its agents or employees and not agents or employees of C/CAG.
10. Schedule. CITY shall adhere to the schedule set forth in Exhibit A; provided, that C/CAG shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of CITY's work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, CITY's officers or employees.

CITY acknowledges the importance to C/CAG of C/CAG's Project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

11. Indemnity. CITY hereby agrees to defend, indemnify, and save harmless C/CAG, its boards, commissions, officers, attorneys, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs of litigation and attorneys fees) of every nature, kind or description, which may be brought against, or suffered or sustained by, C/CAG, its boards, commissions, officers, attorneys, employees or agents arising or resulting directly or indirectly from any act or omission of CITY, its officers, employees or agents in the performance of any services or work pursuant to this Agreement.

The duty of CITY to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require CITY to indemnify C/CAG, its boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

12. Insurance. CITY shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability, and professional liability insurance covering risks relating to CITY's services to be performed hereunder in form subject to the approval of the Authority's Attorney and/or Authority's Risk

Manager. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to CITY's vehicle usage in performing services hereunder)
¹ Professional Liability	\$1,000,000 per claim and \$2,000,000 aggregate

Concurrently with the execution of this Agreement, CITY shall, on the Insurance Coverage form provided in Exhibit C, furnish C/CAG with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

- (a) Precluding cancellation or **reduction in per occurrence limits** before the expiration of thirty (30) days (10 days for nonpayment) after C/CAG shall have received written notification of cancellation in coverage or **reduction in per occurrence limits** by first class mail;
- (b) Naming the City/County Association of Government its officers, boards, commissions, attorneys, employees, and agents, as additional insured; and

¹ Note: Professional liability insurance coverage is not required if the contractor/vendor/consultant is not providing a service regulated by the state. (Examples of service providers regulated by the state are insurance agents, professional engineers, doctors, certified public accountants, lawyers, etc.) Please check and initial the following if professional liability is **NOT** required for this agreement.

☐ Recommended _____ [Project Manager] ☐ Approved _____ [Risk Manager]

- (c) Providing that CITY's insurance coverage shall be primary insurance with respect to C/CAG, its officers, boards, commissions, attorneys, employees, and agents, and any insurance or self-insurance maintained by C/CAG for itself, its officers, boards, commissions, employees, or agents shall be in excess of CITY's insurance and not contributory with it.

Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the City must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage

CITY shall furnish the C/CAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the C/CAG before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CITY's obligation to provide them. The C/CAG reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Waiver of Subrogation

CITY hereby grants to C/CAG a waiver of any right to subrogation which any insurer of said Consultant may acquire against C/CAG by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not C/CAG has requested or received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to C/CAG.

Special Risks or Circumstances

C/CAG reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

13. WORKERS' COMPENSATION. CITY certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CITY certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
14. NON-DISCRIMINATION. The CITY will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CITY will take affirmative action to insure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CITY shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CITY agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CCAG setting forth the provisions of this non-discrimination clause.
15. Notice. All notices required by this Agreement shall be given to C/CAG and CITY in writing, by first class mail, postage prepaid, addressed as follows:

C/CAG: City/County Association of Governments
County Office Building
555 County Center
Fifth Floor
Redwood City, California 94063
Attention: Richard Napier

CITY: City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attention: Rebecca Mendenhall

16. Non-Assignment. This Agreement is not assignable either in whole or in part.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.

18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
19. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs. If a party refuses or fails to participate in mediation in good faith prior to filing a lawsuit, then that party shall be barred from recovery of attorneys fees and costs of suit.
21. Entire Agreement. This Agreement, including Exhibits A and B comprise the entire Agreement between the C/CAG and CITY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF SAN CARLOS

Dated: _____

Jeff Maltbie, City Manager

C/CAG

Dated: _____

Richard Napier, Executive Director

APPROVED AS TO FORM

Dated: _____

Gregory J. Rubens, City Attorney

APPROVED AS TO FORM

Dated: _____

C/CAG Legal Counsel

EXHIBIT A

SCOPE OF WORK AND SCHEDULE AND FEES

A. SCOPE OF SERVICES

1. The City will perform Financial Services for the C/CAG, including establishing and maintaining bank and investment accounts; financial system set up; establishing and implementing internal financial controls, financial policies and procedures and investment policies; paying vendors; managing receivables; investing surplus cash; reporting fiscal year financial results; managing the year-end audit process; budgeting and performing those tasks necessary to implement these services.

2. In performing the Services under this Agreement, the City employees assigned to provide C/CAG services shall comply with C/CAG's Bylaws and other rules, principles, and laws applicable specifically to C/CAG, including without limitation, C/CAG's Financial Policy and Procedures, as may be amended from time to time.

3. Nothing herein shall prohibit or otherwise limit C/CAG's right to enter into further agency agreements and/or work order arrangements with other public agencies for the provision of these or other services.

B. COMPENSATION

1. C/CAG agrees to pay to City the full cost of providing financial services as shown in this Exhibit A, as the same may be amended from time to time by agreement between the Parties.

2. C/CAG and City acknowledge and agree that compensation paid by C/CAG to City under this Agreement is based upon City's cost of providing the services required hereunder, including salaries and benefits of employees.

3. C/CAG agrees to reimburse the City for Financial Services. Direct external costs are borne by C/CAG. Financial services costs are those expenses necessary to administer this Agreement and are included in the fixed rate. City will provide these services for a fixed annual fee for FY 2013 (July 1, 2012 to June 30, 2013) of \$73,600. This fixed rate will be adjusted on an annual basis.

4. Terms of Payment. The City shall submit invoices quarterly for the prior quarter's services. Invoices shall be submitted 30 days prior to the end of the first quarter and shall be delinquent if not paid within 30 days of receipt. Each invoice will detail the quarterly cost of services and prior quarter's direct external costs. Delinquent payments will be subject to a late payment carrying charge computed at a periodic rate of 1% per month, which is an annual percentage rate of 12%, which will be applied to any unpaid balance owed commencing seven (7) days after the payment due date.

6. Charges for other services and special projects requested of the City will be at a rate of \$103/hour not including expenses. External vendor charges, such as independent auditor, postage, storage and legal fees, will be paid directly by the C/CAG or reimbursed by the C/CAG if paid by the City, and be without City overhead fees. The City will manage the outside audit process (and C/CAG's costs for this management service are included in the annual Administrative Charge).

EXHIBIT B
CITY'S FEE SCHEDULE

C/CAG FINANCIAL SERVICES ESTIMATE

Scope of Financial Services to include:	<u>FY 2013</u>
Daily Cash	\$1,140.00
Administrative Services	1,040.00
Accounts Payable	31,200.00
Billing	2,190.00
Cash Receipts	2,190.00
GL (monthly reconciliations, journals)	11,440.00
Financial and budget reporting	7,800.00
Audit, CAFR and Year-end Activities	<u>16,600.00</u>
Total to be performed by City of San Carlos	<u><u>\$73.600.00</u></u>

Charges for other services requested of the City will be at a rate of \$103/hour per NBS Cost Schedule

Other Charges to be billed separately

Lanced, Soll & Lunghard, LLP**	per Engagement Letter
Storage costs	pass-thru
Postage costs	pass-thru

EXHIBIT C

INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverage specified in Section 11 - INSURANCE of the Agreement on the attached form. No substitute form will be accepted.

ATTACHED

1. Insurance Coverage Form

This INSURANCE COVERAGE FORM modifies or documents insurance provided under the following:

Named Insured: _____

Effective Work Date(s): _____

Description of Work/Locations/Vehicles: _____

ADDITIONAL INSURED:

City of San Carlos

600 Elm Street, San Carlos, CA 94070

Attention: _____

Contract Administrator

Endorsement and Certificates of Insurance Required

The Additional Insured, its elected or appointed officers, officials, employees and volunteers are included as insured with regard to damages and defense of claims arising from: (Check all that apply)

☐ **General Liability:** (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased occupied or used by the Named Insured, and/or (d) permits issued for operations performed by the Named Insured. {Note: MEETS OR EXCEEDS ISO Form # CG 20 10 11 85}

☐ **Auto Liability:** the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the Additional Insured, its elected or appointed officers, officials, employees or volunteers.

☐ **Other:** _____

Certificates of Insurance Required (no endorsement needed) (Check all that apply)

☐ **Workers Compensation:**

☐ **Professional Liability:**

Insurer

Policy No.

Insurer

Policy No.

PRIMARY/NON-CONTRIBUTORY: This insurance is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insured.

SEVERABILITY OF INTEREST: The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limit of liability.

PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS: Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Additional Insured, its elected or appointed officers, officials, employees, or volunteers.

CANCELLATION NOTICE: The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (ten (10) days if canceled due to non-payment) by regular mail has been given to the Additional Insured. Such notice shall be addressed as shown above.

WAIVER OF SUBROGATION: The insurer(s) named above agree to waive all rights of subrogation against the CITY/District, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the CITY/District.

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.

SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____ (print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.

SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)

ORGANIZATION:

TITLE:

ADDRESS: _____

TELEPHONE: () _____

DATE ISSUED: